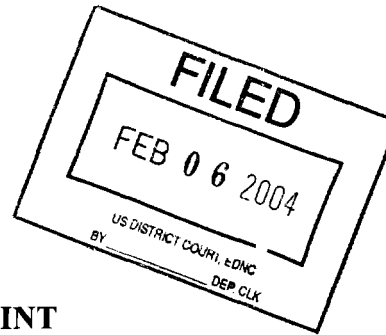


ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

Eastern Division

Case No.: 4:04-CV-18-H3



AMERICAN ALTERNATIVE INSURANCE)
CORP.,)

Plaintiff,)

vs.)

WEST PHARMACEUTICAL SERVICES, INC.,)

Defendant.)

COMPLAINT

JURISDICTION

This action is brought and the Court's jurisdiction is invoked pursuant to 28 U.S.C. §1331 (Federal Question Jurisdiction). This action arises under statutes enacted by the United States of America, including without limitation 42 U.S.C. §9601, *et seq.*

FACTUAL ALLEGATIONS

Comes the Plaintiff, and for its cause of action against the Defendant, states:

1. Plaintiff American Alternative Insurance Corp. (hereinafter "AAIC") is an insurance company, domiciled in Delaware, and authorized to write and sell policies of insurance under the laws of North Carolina.
2. Defendant West Pharmaceutical Services, Inc. (hereinafter "WEST") is a Pennsylvania Corporation, duly registered and licensed to do business in North Carolina.
4. On January 29, 2003 a catastrophic explosion and fire occurred at the West Pharmaceutical plant (hereinafter referred to as the "Kinston Facility") located on

Rouse Road in Kinston, Lenoir County, North Carolina and owned and operated by WEST.

5. The West Pharmaceutical plant meets the definition of a “facility” as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) .

6. The following fire departments responded to the fight the Kinston Facility fire with personnel and equipment, or supplied those actively engaged in fighting the fire with equipment for that purpose: Pinewood Volunteer Fire Department, Inc., Southwood Volunteer Fire Department, Inc., Sandy Bottom Volunteer Fire and Rescue, Inc., New Hope Volunteer Fire Department Of Wayne County, Inc., North Lenoir Fire Protection Association, Inc., Hugo Volunteer Fire Department and Rescue, Inc., Sand Hill Volunteer Fire Department, Inc., Elroy Volunteer Fire Fighters, Inc., Wyse Fork Volunteer Fire Department, Inc., The Jason Rural Fire Association, and the Town of La Grange.

7. At the Kinston Facility WEST maintained numerous substances, pollutants, and contaminants that are deemed hazardous substances pursuant to CERCLA. These substances, pollutants, and contaminants include heavy metals cadmium, chromium, copper, nickel, and zinc; volatile and semi-volatile compounds, 3,3 dichlorobenzidine, di-n-octyl phthalate, diethyl phthalate, chloroform, ethylbenzene, methylene chloride, toluene, trichloroethylene, trichloroflouromethane and vinyl chloride. The facility also stored large quantities of fuel oil and chlorine.

8. During the explosion and fire, various hazardous substances under CERCLA were released into the environment. In addition, the fire threatened to release additional hazardous substances into the environment.

9. The fire departments' response to the plant fire was, in addition to extinguishing of the fire, to contain the release and prevent the threatened release of hazardous substances into the environment in accord with the National Contingency Plan under CERCLA.

10. In their response to the release and threatened release of hazardous, the fire departments incurred response costs in the form of damage to fire fighting equipment that had to be repaired and replaced. The costs incurred were necessary to the fire departments' response.

11. The losses sustained by the fire departments were insured and paid by Plaintiff AAIC pursuant to their respective policies of insurance. The losses paid by AAIC total \$149,581.41.

12. As a result of the aforementioned payments, Plaintiff AAIC is subrogated to the rights of its insureds.

CLAIM OF RELIEF – STRICT LIABILITY UNDER CERCLA

13. The allegations contained in Paragraphs 1 through 12 of the Complaint are realleged and incorporated by reference.

14. Pursuant to 42 U.S.C. §9601 *et seq* and 42 U.S.C. §9607 the Defendant is strictly liable to the Plaintiff for the claims paid and arising as response costs to the fire at the Kinston Facility.

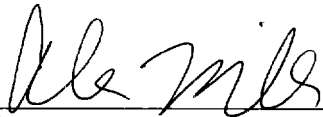
WHEREFORE, Plaintiff seeks the following relief:

1. Judgment against Defendant in the sum of \$149,581.41, plus interest from the date suit was instituted;

2. For the costs of this action; and
3. For such other and further relief as the Court may deem just, fair, and reasonable.

This the 44 day of February, 2004.

FREDERIC E. TOMS & ASSOCIATES, PLLC
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